

# EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

INLINE CONNECTION CORPORATION, )  
 )  
Plaintiff, )  
 )  
v. ) Civil Action No.:  
 ) 2:05cv205  
VERIZON INTERNET SERVICES, et al., )  
 )  
Defendants. )

TRANSCRIPT OF PROCEEDINGS  
(Hearing on Defendants' Motions)

Norfolk, Virginia  
July 24, 2006

BEFORE: THE HONORABLE HENRY COKE MORGAN  
United States District Judge

**COPY**

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Official Court Reporter

1 Appearances:

2 HELLER EHRMAN LLP  
3 By: ALEXANDER LAMB BRAINERD, ESQUIRE  
4 MICHAEL KENNETH PLIMACK  
5 KYE E. KIRBY, ESQUIRE  
6 - and -  
7 KAUFMAN & CANOLES, P.C.  
8 By: STEPHEN E. NOONA, ESQUIRE  
9 Counsel for Plaintiff  
10  
11 WILEY, REIN & FIELDING, LLP  
12 By: JOHN BENEDICT WYSS, ESQUIRE  
13 - and -  
14 MCGUIRE WOODS  
15 By: ROBERT WILLIAM MCFARLAND, ESQUIRE  
16 Counsel for Defendants  
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20  
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P R O C E E D I N G S

(Proceedings commenced at 11:00 a.m. as follows:)

COURTROOM DEPUTY: Inline Connection Corporation v.  
Verizon Internet Services, Inc., et al., Civil Action No.  
2:05cv205.

Counsel ready for the plaintiff?

MR. NOONA: We are.

COURTROOM DEPUTY: Counsel ready for the defendants?

MR. McFARLAND: Counsel for the Verizon defendants are  
ready, Your Honor.

THE COURT: All right, I believe we are here on the  
defendant's motion?

MR. McFARLAND: Thank Your Honor. May it please the  
Court, Robert McFarland on behalf of the Verizon defendants.

There is one preliminary matter, Your Honor, that I  
think Mr. Noona and I may want to just, as the Court is  
undoubtedly aware of it, a number of documents and pleadings  
have been filed under seal in this case. I don't see anyone in  
the courtroom who is not directly connected with this  
proceeding. But it is, I think, not only possible but perhaps  
likely that some exhibits that were filed under seal may be  
referenced today in the hearing.

THE COURT: All right.

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1 MR. NOONA: Yes, sir, Your Honor. We've both filed  
2 Local Rule 5.

3 THE COURT: All right.

4 MR. McFARLAND: Your Honor, with that, let me  
5 introduce my co-counsel, John Wyss, who is going to be doing the  
6 argument on behalf of the Verizon defendants this morning.

7 THE COURT: All right.

8 MR. WYSS: Good morning, Your Honor.

9 THE COURT: Good morning.

10 MR. WYSS: We have today two issues before the Court  
11 and which only this Court can answer. The first issue is the  
12 subject matter jurisdiction of this court over the lawsuit that  
13 is still before it. And secondly, an issue of whether Inline  
14 and its counsel, when they brought this case, misled the Court  
15 as part of a forum-shopping effort by making false complaint  
16 allegations, misleading venue arguments, and concealing the  
17 involvement of the real parties at interest who actually brought  
18 the case, all of whom are Delaware corporations.

19 Your Honor, I would, if I might, I would like to  
20 hand up, because it will help keep me, some demonstratives,  
21 about eight charts that --

22 THE COURT: Well, I don't want to derail your  
23 presentation, counsel, but the first thing that I'm interested  
24 in knowing is what the difference is between my transferring the  
25 case in chief to Delaware and my not transferring this to

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1 Delaware, but keeping the stay in place until Delaware resolves  
2 it? Why should we have a parallel discovery proceeding going on  
3 in this court when beginning, apparently in April, there was a  
4 deposition given for this very same issue to be explored in  
5 discovery there?

6 MR. WYSS: Your Honor, with respect to the Delaware  
7 case, and this is in my charts as a chart, Chart No. 2, the suit  
8 in front of Judge Farnan and with the Verizon cases, that case  
9 has been stayed. It is on ice with the sole exception of  
10 discovery going forward. It is true discovery includes the  
11 ownership issue, but the Court is not going to take any  
12 substantive action in that case under his stay until the entire  
13 AOL and Earthlink cases are over with. Those cases are not  
14 scheduled to go to trial until, I think, February of next year.  
15 With the appeals and everything through the Federal Circuit  
16 we're talking about 2008 or later.

17 In addition, Your Honor, and very importantly, the  
18 critical entities, BBTI and Pi Squared, the people who actually  
19 have jurisdiction, have the right to bring the lawsuit, they  
20 have filed a new lawsuit up in Delaware which has been assigned  
21 to Judge Farnan. They have filed it without joining Inline.  
22 They have asserted in the new lawsuit that they have the right  
23 and the interest. By doing that, Your Honor, they have  
24 essentially eliminated any impetus for Judge Farnan to ever  
25 address this issue. They have got their separate lawsuit, and

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1 that's the suit that's going to be up there.

2 In addition, the discovery has been very limited. We  
3 have had, we have been trying to get documents since this  
4 ownership issue first came up last February. Basically Inline  
5 is taking the position that we're not going to give you any  
6 documents other than the ones that we have in our files, even  
7 though, as the agreement that is before the Court and here show,  
8 that they have appointed BBTI as their, quote, "true and lawful  
9 attorney and agent in fact" for doing everything with respect to  
10 this litigation. So this is an issue, Your Honor, which is --

11 THE COURT: Well, now you say, how do you know that  
12 Judge Farnan is not going to decide the subject matter  
13 jurisdiction of the case? Isn't the subject matter jurisdiction  
14 of the case an issue in the new case that's been filed up there?

15 MR. WYSS: It is an issue that has been raised. And  
16 we will defend on that. It is also an issue in this case.

17 THE COURT: But in the case, the pre-existing case up  
18 there, that case was filed before these transfers took place.  
19 So it's not necessarily an issue in that case, because at the  
20 time they filed it they did have the ownership. Or are you  
21 saying that once they made these assignments it eliminated  
22 jurisdiction? In other words, is this same issue going to come  
23 up in that other case?

24 MR. WYSS: It will not come up in that other case,  
25 Your Honor.

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1 THE COURT: Why not?

2 MR. WYSS: The other case is filed in the name of  
3 BBTI.

4 THE COURT: No, I don't mean that case, I mean --

5 MR. WYSS: And Pi Squared.

6 The one that's been transferred up from Your Honor?

7 THE COURT: No, the one that was up there first.

8 MR. WYSS: The AOL and the Earthlink case, yes, Your  
9 Honor, no, it will not.

10 THE COURT: Why won't it come up in that case?

11 MR. WYSS: Those cases --

12 THE COURT: Because it predated the transfer?

13 MR. WYSS: Absolutely. Well, those cases were filed  
14 in 2002. At that time Inline owned all right, title and  
15 interest. The transfers took place in 2003, and critically with  
16 respect to BBTI, in March of 2004. So the AOL and Earthlink  
17 case will never address this ownership issue at all. And that's  
18 the one we're being stayed in light of.

19 THE COURT: Well, why should we have duplicate  
20 discovery going on in two jurisdictions? I mean, why -- when I  
21 start thinking about this case I thought about that famous  
22 quotation about the United States Senate referring to their  
23 debates, and they said everything that can be said has been  
24 said, but everybody hasn't said it yet. Well, that's what  
25 occurred to me here. All the discovery that can be taken will

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1 be taken, but everybody hasn't taken it yet. So why should  
2 these entities jump in and take this discovery that somebody  
3 else is taking? It seems to me that that's just an additional  
4 expense for Verizon. Why does Verizon want to do all this if  
5 somebody else is doing it for them?

6 MR. WYSS: Is this with respect to the ownership  
7 discovery, Your Honor?

8 THE COURT: Yes.

9 MR. WYSS: Again, in the AOL and Earthlink cases, they  
10 do not have the ownership issue that we have. That is not part  
11 of their case. They have in that case, they have raised it in  
12 terms of joining BBTI and Pi Squared to that case.

13 THE COURT: Well, what discovery has gone on up there  
14 under Judge Farnan's order? The Court will grant but will  
15 permit defendants to proceed with discovery as to their  
16 unenforceability and invalidity defense. That doesn't include  
17 this issue?

18 MR. WYSS: Your Honor, that, Judge Farnan's order is  
19 in our case, in the transferred case. The AOL/Earthlink case is  
20 pending before Magistrate Judge Thyng. Judge Farnan's order  
21 allows us to do discovery.

22 Your Honor, we have got the exclusive license  
23 agreement. There is no further discovery that's necessary over  
24 that. It is the March 4, 2004 exclusive license agreement that  
25 transferred all rights from Inline to BBTI. We're right

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1 squarely in the i-Ticket situation, Your Honor.

2 THE COURT: So what you're saying is you don't need  
3 any more discovery?

4 MR. WYSS: That is correct. Certainly on the  
5 threshold jurisdictional issue, it is decided by the exclusive  
6 license agreement as confirmed by the more-recently-revealed  
7 Verizon agreement.

8 THE COURT: All right. Well, the case I've  
9 transferred up there has been stayed except for this issue. Now  
10 you're telling me that Judge Farnan is not going to decide the  
11 case I transferred up there until the AOL/Earthlink case is  
12 decided? How do we know that?

13 MR. WYSS: Maybe I could just correct Your Honor.  
14 Judge Farnan has stayed all substantive action in the case that  
15 you transferred up there. He has allowed discovery and only  
16 discovery to go forward on invalidity and unenforceability  
17 issues. We believe that that should include the ownership  
18 issue. We filed a motion to compel, it was granted, we were  
19 then filing a motion to enforce it, and he has now clarified  
20 that we're entitled to discovery on the ownership issue as part  
21 of unenforceability and invalidity. However --

22 THE COURT: I would think so, yes.

23 MR. WYSS: However, everything substantively in that  
24 case is stayed pending the final resolution of the parallel  
25 AOL/Earthlink case before Magistrate Judge Thyng.

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1 THE COURT: Well, is the magistrate judge going to try  
2 that case or is he just going to do the preliminaries?

3 MR. WYSS: She, Your Honor. She, I believe, will be  
4 trying it, or has a trial date scheduled for February. I could  
5 certainly defer --

6 THE COURT: On a consent? She's trying it on a  
7 consent?

8 MR. WYSS: Yes, Your Honor, that is correct.

9 THE COURT: All right. So Judge Farnan is permitting  
10 discovery on this ownership issue in Delaware and discovery has  
11 been going forward on that issue, and indeed you tell me that  
12 you have all you need?

13 MR. WYSS: That's correct, Your Honor.

14 THE COURT: Well, how do we know that Judge Farnan is  
15 not going to decide -- if the ownership issue, if you prevail on  
16 that here, you should prevail on that in Delaware too. Why  
17 would Judge Farnan withhold a ruling on the ownership issue  
18 pending the trial of the other case if that's not an issue in  
19 the other case? I don't understand.

20 MR. WYSS: He has two cases, Your Honor. He has a  
21 second case, the BBTI and the Pi Squared one without Inline,  
22 where there is no ownership issue.

23 THE COURT: All right. Well, why is that a reason not  
24 to decide the ownership issue?

25 MR. WYSS: Because he, you know, he has no reason to

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1 decide anything until the AOL and Earthlink cases are decided.

2           This is an issue which we believe Your Honor should  
3 decide. This is where the case was brought. We will clearly  
4 take up -- because you have no subject matter jurisdiction.  
5 This is a threshold jurisdictional issue. This is an issue --

6           THE COURT: Well, it is a threshold jurisdiction issue  
7 in Delaware too, isn't it?

8           MR. WYSS: And it is a threshold issue in the stayed  
9 case here with respect to the remaining parties that remains on  
10 this Court's docket.

11           THE COURT: Well, I don't understand why we have to be  
12 going forward in two courts at one time just because you want to  
13 get some damages in the form of sanctions against the plaintiff.  
14 I mean, that seems to be the only reason to do anything here.

15           MR. WYSS: We are currently bringing it here, Your  
16 Honor, because Your Honor, Your Honor's court and we, were put  
17 through about eight months of very intense litigation in the  
18 case.

19           THE COURT: And now we're going to go through more. I  
20 mean, if it's decided that there's no subject matter  
21 jurisdiction in Delaware, it seems to me that would be some sort  
22 of an estoppel in this case. It might not be res judicata in  
23 this court, the parties are not the same, but it seems to me it  
24 would be some sort of estoppel here. So the only thing to gain  
25 by going forward here is that you hope I'll decide it in your

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1 favor before it gets decided in Delaware.

2 But I don't understand why you say that Judge Farnan  
3 is not going to decide this issue until the other case is over.

4 MR. WYSS: Well, I say that, Your Honor, because that  
5 is the status of his order. Just as with you, I would have to  
6 go to Judge Farnan, say Your Honor, we want you to lift the stay  
7 and to address this issue in the one case, which won't affect  
8 the parallel consolidated case at all.

9 THE COURT: I keep reading this case, this opinion of  
10 Judge Farnan.

11 MR. WYSS: And Your Honor, I may not have been clear.  
12 I guess what -- one point I did want to make with respect to  
13 what Judge Farnan is going to do, there is this brand new filed  
14 case up there which has no ownership issue, which has the right  
15 parties, BBTI, Pi Squared, does not have Inline in it.

16 THE COURT: Right.

17 MR. WYSS: And because that one has been assigned to  
18 Judge Farnan, again, I think there's no -- if I were Judge  
19 Farnan I'd say, ah, let's wait until AOL is completed and we'll  
20 sort it all out, which is basically what his orders are saying.

21 THE COURT: Why shouldn't I say the same thing?

22 MR. WYSS: What?

23 THE COURT: Why shouldn't I say the same thing?

24 MR. WYSS: Because as I tried to make clear, in the  
25 AOL and the Earthlink case that issue is not going to be

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1 litigated. This is a subject matter --

2 THE COURT: Well, you --

3 MR. WYSS: -- jurisdiction issue.

4 THE COURT: -- can say the same thing to Judge Farnan,  
5 can't you?

6 MR. WYSS: I certainly can.

7 THE COURT: Have you?

8 MR. WYSS: I have not, Your Honor. Because once we  
9 got the information showing that when the case was brought down  
10 here, that the complaint allegations that Inline had all right,  
11 title and interest and the arguments made, and the documents  
12 that we got showing that this case was brought by BBTI in the  
13 name of Inline, that when you have that, this Court is the one  
14 who was confronted with the case in the first place --

15 THE COURT: Well, Inline and all these, Pi Squared and  
16 all these people, they are what is referred to in the industry  
17 as patent trolls --

18 MR. WYSS: I believe that --

19 THE COURT: -- or do they actually do anything?

20 MR. WYSS: Well, it's very good, if you look at Tab 3  
21 in the book, Your Honor, has the chart, that Paperboy Ventures  
22 is the overall umbrella organization. Pi Squared and BBTI are  
23 pop-up Delaware LLC entities. We do have the benefit of the  
24 deposition that was taken in the AOL case of Pi Squared and BBTI  
25 under Rule 30(b)(6). And their witness made very clear that

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1 they have no employees, they have no offices, they have no real  
2 estate, they have no products, they have no customers, they have  
3 no revenues since inception, they are entirely funded by  
4 Paperboy Venture, and the sole operating -- that the Paperboy  
5 Ventures, the CFO of that company, serves as the chief executive  
6 officer and the manager of these LLCs. So these are  
7 single-purpose entities that have been sent up strictly to  
8 litigate Pi Squared, to litigate the case against AOL on  
9 Earthlink, BBTI to litigate the case against Verizon, as well as  
10 any future suits that they might bring.

11 So I don't know if that makes them trolls. They  
12 clearly are people who fund patent litigation hoping to --

13 THE COURT: I don't know, the Supreme Court didn't  
14 seem to be impressed with the difference between trolls and  
15 people who actually use the patents anyway.

16 MR. WYSS: Well, I must confess, Your Honor, I was on  
17 the side of the NTP, which is the, in the Blackberry case, so I,  
18 I have been accused of being a troll. But in that case we  
19 clearly represented the actual inventor who prosecuted these and  
20 actually had a working system back in the early '90s.

21 THE COURT: Well, are you counsel of record in the  
22 case that was transferred to Delaware as well? Or do you just  
23 represent the entities that weren't part of the transfer?

24 MR. WYSS: Your Honor, I am counsel of record in this  
25 case and counsel of record in both of the cases. The one that

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1 was transferred --

2 THE COURT: Well, why haven't you said to Judge Farnan  
3 you've let us take discovery, we've taken discovery, and we now  
4 would like for you to decide that there is no subject matter  
5 jurisdiction? Why haven't you asked him to make that decision?

6 MR. WYSS: I came to this court because this is the  
7 court where the case was filed and where the actual complaint  
8 allegations were made. And also because, as here, up there I am  
9 facing a stay which Inline requested that all substantive action  
10 other than this litigation discovery go forward.

11 THE COURT: All right. Well, I want to get all this  
12 straight before we start talking about the merits of ownership.  
13 Who do you represent among the transferred defendants?

14 MR. WYSS: I represent all of the transferred  
15 defendants, Your Honor.

16 THE COURT: All right. Well, let me hear what the  
17 other side has to say.

18 MR. NOONA: May it please the Court, Your Honor,  
19 Stephen Noona on behalf of Inline. I'd like to introduce Mr.  
20 Alexander Brainerd from the Heller firm, he'll be arguing the  
21 motion.

22 MR. BRAINERD: Good morning, Your Honor.

23 THE COURT: Good morning.

24 MR. BRAINERD: As you well know, it's our position  
25 that there is no reason to lift the stay. I think in large part

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1 for the reasons that the Court has alluded to and the questions  
2 that it's asked.

3 THE COURT: Well, I mean these accusations are against  
4 both you and your client.

5 MR. BRAINERD: That's true. And I'm --

6 THE COURT: Obviously you don't want the stay listed,  
7 but --

8 MR. BRAINERD: Let me just say, Your Honor, maybe I  
9 should say this at the outset so I can get beyond those  
10 allegations, and then I'll get to the merits of what you're  
11 concerned about.

12 But you know, I've been practicing law for 38 years.  
13 I've never had the kinds of charges that have been leveled  
14 against us and our firm ever leveled against me in my entire  
15 career. I find them to be offensive and irresponsible. And I  
16 want this Court to know, and I'm here to stand before this Court  
17 and represent to this Court and assure this Court that neither  
18 myself, Mr. Plimack, Ms. Kirby, the Heller firm or the Swidler  
19 firm did anything to misrepresent anything before this Court.  
20 And I'm happy to answer any questions or address any concerns  
21 the Court may have on that subject when the time is appropriate.

22 THE COURT: Well, somebody --

23 MR. BRAINERD: But I'm not, I'm not --

24 THE COURT: Somebody's misrepresented something before  
25 this Court. Either your firm has or the other side has, one or

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1 the other.

2 MR. BRAINERD: Well, I mean --

3 THE COURT: I can't reconcile these two positions.

4 And I hate to see litigation deteriorate into personal  
5 allegations.

6 MR. BRAINERD: I do too, Your Honor. And I'm  
7 perfectly willing to address and defend the conduct of my firm  
8 and the Swidler firm at any moment in time.

9 But I want to get back to the issues that you're  
10 raising, because I think they are important issues. And the  
11 first thing I want to point out is Mr. Wyss just indicated to  
12 the Court that the stay was requested by Inline in the context  
13 of the case up in Delaware. That's not accurate. The stay was  
14 requested by both parties. Both by Inline and Verizon. And it  
15 was at Verizon's request that Judge Farnan issued an order which  
16 allowed for discovery on the ownership issues to move forward.

17 THE COURT: All right. Now, wait a minute. It says  
18 "pending before the Court is plaintiff Inline's motion to stay."

19 MR. BRAINERD: Right.

20 THE COURT: It doesn't say -- I'm looking now at Judge  
21 Farnan's order, doesn't say a joint motion.

22 MR. BRAINERD: But they stipulated to that motion,  
23 Your Honor. They agreed with it. So I mean, it's --

24 THE COURT: Wait a minute. Does it say that in here?

25 MR. BRAINERD: Well, I'm making a representation to

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1 the Court based upon what I understand to be the record that  
2 they in fact did agree to it.

3 THE COURT: Is that right, counsel?

4 MR. WYSS: Your Honor, we took the position that the  
5 case should go forward on our issues because of the problem of  
6 trying to find prior art from the 1980s and 1990s, and we did  
7 not object to the staying of their infringement discovery  
8 because the current systems were not going to change. But our  
9 defenses are the ones that we said we needed the full right to  
10 go forward on.

11 MR. BRAINERD: But let me, I want to read from a  
12 couple of documents. One is Exhibit 13 to Mr. Wicky's  
13 declaration in support of our opposition, Your Honor. And this  
14 was a motion to compel discovery regarding the threshold  
15 jurisdictional ownership issue that was filed by counsel for  
16 Verizon. And they tell the Court, "The ownership issue and  
17 Inline's standing to sue are threshold jurisdictional issues  
18 that must be addressed at the outset."

19 And then Judge Farnan, in responding to that motion  
20 issues an order which is at Tab 11 of that same declaration, and  
21 he says "The Court concludes that the evidence sought by  
22 defendants is relevant to defendant's claim that the Court lacks  
23 jurisdiction. Ownership is a threshold issue, and the Court may  
24 lack jurisdiction if, as defendants contend, plaintiff assigned  
25 all substantial rights to a non-party."

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1           It's very clear that Judge Farnan -- they keep saying  
2 the case is stayed. Well, the case is not stayed in Delaware  
3 with respect to this ownership issue. Judge Farnan has  
4 indicated that the discovery is going forward, it is going  
5 forward. Judge Farnan has given an indication in this order he  
6 is going to address this issue. I mean, for example, they  
7 wouldn't be asking for this discovery unless they presumably had  
8 an intent to use it in some fashion.

9           This whole idea about this other complaint is a total  
10 red herring. In that complaint that was filed by Pi Squared and  
11 BBTI, they allege that they believed that Inline is the proper  
12 owner of these patents, and that he's filed simply because the  
13 allegations against them is a belt-and-suspenders kind of  
14 pleading. There's absolutely no question that Judge Farnan is  
15 dealing with these issues now, will resolve these issues, and  
16 therefore there is no reason for this Court to lift the stay at  
17 this time to deal with these issues down here.

18           I mean, after all, the Court, as we know, transferred  
19 the case up there. You did so, as I understand from your order,  
20 in large part because you felt, because of the knowledge and  
21 familiarity of the court in Delaware with the underlying issues  
22 of this litigation, it was the best and most efficient court in  
23 which to litigate the issues. We are litigating the ownership  
24 issue. It will be resolved up there. And there's --

25           THE COURT: Well, what about counsel keeps telling the

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1 Court that that's, that won't be resolved until the AOL, the  
2 final decision is made in the AOL case.

3 MR. BRAINERD: There is no connection between the two.  
4 I mean, Magistrate Thyng is going to go to trial on the  
5 AOL/Earthlink case in February of next year. And the ownership  
6 issues as -- and I agree with Mr. Wyss on this, Mr. Wyss on  
7 this -- that the ownership issues in this case are not the same  
8 as the ownership issues in this case. And there's every  
9 indication from Judge Farnan --

10 THE COURT: That's because when that case was filed it  
11 was before all these alleged transfers took place.

12 MR. BRAINERD: Exactly. Exactly. And Judge Farnan --

13 THE COURT: And the fact that they took place  
14 afterwards doesn't oust the Court of jurisdiction. Nobody's  
15 saying that.

16 MR. BRAINERD: No. As far as I know. I mean, I'll  
17 let Ms. Kirby...

18 THE COURT: All right.

19 MR. BRAINERD: So there's nothing to, there is nothing  
20 to indicate that Judge Farnan is going to wait for the AOL case  
21 to resolve before moving forward.

22 THE COURT: I can just pick up the phone and call  
23 Judge Farnan. I happen to know Judge Farnan. I can call him up  
24 and ask him.

25 MR. BRAINERD: Pardon me, Your Honor? I'm sorry.

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1 THE COURT: I say I can call him up and ask him.

2 MR. BRAINERD: Well, I, we invite --

3 THE COURT: Do you have any problem with that?

4 MR. BRAINERD: No. I certainly don't.

5 THE COURT: All right. So what you're saying is that  
6 Judge Farnan has not, in your view, stayed a decision on the  
7 ownership issue, he's simply just stayed action on the  
8 infringement issue because he feels that the infringement issue  
9 will probably be decided by the AOL/Earthlink case anyway?

10 MR. BRAINERD: No. What Judge Farnan did, and we can  
11 pass up -- I think the orders may be incorporated in all the  
12 papers that are before you -- Judge Farnan essentially issued a  
13 stay with certain carve-outs.

14 THE COURT: Yes.

15 MR. BRAINERD: And the carve-outs related primarily to  
16 the issues of invalidity and unenforceability.

17 THE COURT: Right.

18 MR. BRAINERD: Because Verizon came along and said  
19 there was testimony and evidence out there that might become  
20 stale over a certain period of time because it related to  
21 people's memories and things of that nature.

22 THE COURT: Right.

23 MR. BRAINERD: So at that time Judge Farnan, when he  
24 issued his order, he carved out from his stay initially the  
25 subject matter of validity and enforceability. At the same time

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1 they came back and said, well, we've got to get this ownership  
2 issue resolved. It's a threshold issue, we need to get it  
3 resolved. We need discovery on ownership. And what I read to  
4 you just a minute ago was Judge Farnan's order responding to  
5 that motion indicating very clearly that he agreed, he was  
6 granting their request to proceed with discovery on ownership,  
7 and indicating he as well thought it was a threshold issue.

8 THE COURT: And what he said in the last sentence of  
9 his prior order -- I assume this order was subsequent to April  
10 13th -- he said "The Court will grant Inline's motion to stay,  
11 but will permit the defendants to proceed with discovery as to  
12 their unenforceability and invalidity defenses." That included  
13 discovery on the ownership.

14 MR. BRAINERD: He specifically provided in the order,  
15 discovery --

16 THE COURT: The subsequent order.

17 MR. BRAINERD: I believe -- yes, it is a subsequent  
18 order. That's right. And that is, Judge, Tab 11 to the Wicky  
19 declaration that accompanied our opposition papers.

20 So if you look at the briefs that Verizon filed in  
21 order to get him to do that, they're telling the judge this is a  
22 threshold issue, Judge, we've got to get discover on this so we  
23 can get this wrapped up. And his order, which is at Tab 11,  
24 Judge Farnan orders the discovery on ownership and indicates he  
25 agrees that it's a threshold issue.

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1 Now, if that doesn't --

2 THE COURT: Has he ever said that he was not going to  
3 decide that issue until after the AOL/Earthlink trial was over?

4 MR. BRAINERD: Never.

5 THE COURT: Has he ever said otherwise? Has he ever  
6 said he was going to decide it first?

7 MR. BRAINERD: Let me just -- give me a minute.

8 He said here at the bottom of the same order that we  
9 were looking at, Tab 11, at the bottom of the second page, Page  
10 2, "In the Court's view, the outcome of the AOL/Earthlink case  
11 is irrelevant to the ownership issue because those cases were  
12 filed in 2002, and the rights allegedly were not transferred  
13 until March of 2004."

14 So he's saying that he doesn't consider the outcome or  
15 the development of facts in the AOL/Earthlink case to have any  
16 bearing upon his decision regarding ownership in the Verizon  
17 days. So he clearly indicated by virtue of his orders, one,  
18 we're going to have discovery; and two, I think it's a threshold  
19 issue; and three, the AOL/Earthlink case does not have any  
20 impact upon this issue as far as I'm concerned. And from that I  
21 think we can properly conclude -- and I don't believe that  
22 Verizon would be conducting this discovery unless they intended  
23 to proceed with it in some fashion -- we can properly conclude  
24 that Judge Farnan has in mind resolving this issue at the  
25 earliest possible moment.

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1           And there's absolutely no reason to lift the stay down  
2 here when we have the issue being fully litigated in Delaware  
3 where we are specifically at Verizon's request and Your Honor's  
4 order, which indicated that was the best and most reasonable  
5 forum to litigate the merits of this case.

6           THE COURT: All right. Beth, would you see if you can  
7 get Judge Farnan on the telephone?

8           Mr. Wyss?

9           MR. WYSS: Yes, Your Honor.

10          THE COURT: Something is wrong here. I mean, your  
11 allegations against the plaintiffs and the plaintiff's attorneys  
12 are very serious. If they're true, then they have got a  
13 problem. If they're not true, you've got a problem.

14          MR. WYSS: Your Honor, I stand by my allegations which  
15 are documented in the documents; that the, at the time the  
16 complaint was filed in this case --

17          THE COURT: All right. Well, people disagree on the  
18 meaning of that language. That's the issue. And I don't know  
19 whether that disagreement on what that language means is  
20 reasonable or not.

21          MR. WYSS: With due respect, Your Honor, the complaint  
22 allegation of all right, title and interest being in Inline was  
23 not accurate. There had been an assignment of a percentage  
24 interest in Pi Squared prior to that. And a year before,  
25 particularly bringing in this case, there was this exclusive

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1 license agreement entered --

2 THE COURT: I know. Well --

3 MR. WYSS: -- which gave BBTI --

4 THE COURT: -- this is exactly what I don't want get  
5 into if Judge Farnan is going to do it. Because this situation  
6 could be interpreted as you trying to get me to do the same  
7 thing that you accuse the plaintiff of trying to get me to do,  
8 which was you said they were forum shopping, trying to get me to  
9 make a decision after allegedly unfavorable decisions were made  
10 in Delaware. That's what you say that they did. They had  
11 unfavorable decisions in Delaware, and so they came here and  
12 they wanted me to make a decision which they hoped would be  
13 different than the way things came out in Delaware.

14 Well, now here's Judge Farnan with the issue before  
15 him, and you want me to decide the same issue that's before him,  
16 perhaps in the hopes that I will make some decision that may be  
17 different from his, or perhaps will influence his.

18 So it almost sounds like you're doing the same thing  
19 that you're accusing them of.

20 MR. WYSS: Your Honor, Judge Farnan has not addressed  
21 this issue.

22 THE COURT: Well, I know he hasn't addressed it. But  
23 I mean, you're telling me that he had no intention of addressing  
24 it until after the other trial. I don't know that that's right.  
25 I mean, you can't show me any order he's entered that says that,

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1 that's just what your interpretation of what you think he's  
2 going to do.

3 MR. WYSS: That is correct, Your Honor.

4 THE COURT: But he said in another order that the  
5 outcome of AOL/Earthlink is entirely a separate, has nothing to  
6 do with the ownership issue. They just pointed that out.

7 MR. WYSS: Well, Your Honor, it is my desire to get  
8 the ownership issue decided. In this Court's case, the case  
9 pending before this Court, it is square. It is presented. In  
10 the case before Judge Farnan, because of the subsequent filing  
11 of the BBTI and Pi Squared suit, he no longer has any impetus to  
12 address that issue.

13 THE COURT: Well, I don't know about that.

14 MR. WYSS: I mostly, Your Honor, want to get this  
15 issue decided, and decided as promptly as possible.

16 THE COURT: Well, that's what they could say. That's  
17 what they said when they filed the suit in this court when one  
18 had been pending in Delaware, because they said that we'd decide  
19 it fast, which maybe we would have. That's the same thing they  
20 said.

21 MR. WYSS: Fundamentally there's been no adverse  
22 decision against me by -- there's been no decision. I'm stayed  
23 up there, I'm stayed down here. I'd like to have -- I came to  
24 this court because this is the court which does not have this  
25 second layer --

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1 THE COURT: Well, you're contending that you're stayed  
2 up there, but you're not stayed on this issue, on the ownership  
3 issue.

4 MR. WYSS: I'm not stayed on discovery on this issue.  
5 I will have to file a motion to have to lift stay to get Judge  
6 Farnan to do anything substantively in that case beyond  
7 discovery.

8 THE COURT: Just like you're doing here.

9 MR. WYSS: That is correct, Your Honor.

10 THE COURT: Well, why did you do it here instead of  
11 there?

12 MR. WYSS: Because in this case there's no second  
13 suit. In this case it is squarely presented. And in this case,  
14 again, the original filing and the original representations were  
15 made to this Court. And this Court is aware of the eight months  
16 we were put through down here litigating what is now Delaware  
17 corporations, in a case that should have been brought originally  
18 in Delaware.

19 THE COURT: Well, I'm going to take about a 10-minute  
20 recess and find out if we're able to get Judge Farnan on the  
21 telephone. Since my clerk is not here, I'll state that we're  
22 taking a 10-minute recess.

23 (Recess taken from 11:37 a.m. to 11:57 a.m.)

24 THE COURT: Well, I don't know what we're going to be  
25 able to do about contacting Judge Farnan, because he's in a

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1 trial. His secretary said that he had a sentencing that he was  
2 going to do during lunch hour. So I don't know when I'll be  
3 able to get up with him.

4 So one of you is telling me that he's not going to  
5 decide this ownership issue until after the AOL/Earthlink case  
6 finishes the trial and all its appeals. The other one is saying  
7 there's no reason why he wouldn't go ahead and decide it  
8 whenever he's asked to, but nobody's asked him to. Is that  
9 right?

10 MR. WYSS: That's correct, Your Honor. Nobody has  
11 asked him to. We asked you to, Your Honor, because quite  
12 frankly we felt we had an obligation to come to this court where  
13 this case was started and where the representations were made,  
14 and where we hope we would get a prompt resolution of the, this  
15 threshold jurisdictional issue which impacts the case still  
16 pending before Your Honor.

17 THE COURT: Well, the point is, as with the other  
18 issues that caused this case to be transferred, which you asked  
19 me to do -- didn't you ask me to transfer?

20 MR. WYSS: Yes we did, Your Honor.

21 THE COURT: All right.

22 MR. WYSS: And what --

23 THE COURT: Judge Farnan has been into it and I  
24 haven't, other than receiving this motion. And I don't see any  
25 reason for both of us to be working on the same issue at the

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1 same time.

2 MR. WYSS: Just so I'm clear, Your Honor, Judge Farnan  
3 has not been asked to look at this issue. We did not file  
4 anything there. We alerted him when we came down and told him  
5 what we were doing down here specifically so he would not waste  
6 time getting into that.

7 THE COURT: Well, he's gotten into it to the extent  
8 that he's entered an order saying that his stay encompasses the  
9 ownership issue, and the ownership issue is different than the  
10 issue in the AOL/Earthlink case. Hasn't he done that?

11 MR. WYSS: Yes, that is correct.

12 THE COURT: So what is it about that that leads you to  
13 the belief that he won't decide the ownership issue until after  
14 that case is tried? I mean, he apparently entered an order  
15 saying that that case had nothing to do with the ownership  
16 issue.

17 MR. WYSS: Because in that case, Your Honor, he also  
18 has the simultaneously filed BBTI and Pi Squared case.

19 THE COURT: I knew you were going to say that. But I  
20 don't understand why you say that effects it, because he said  
21 that was not the same issue.

22 MR. WYSS: Your Honor, we're just trying to get a  
23 resolution on this. Again, I felt that it was to this Court  
24 where the complaint was filed, where the representations were  
25 made, is where we should come first. And that was, that was our

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1 decision. And Judge Farnan has not invested any time or energy  
2 considering this issue. And for the reasons I've stated, I'm  
3 not sure when and if and ever he's going to get to addressing  
4 those issues. As you point out, if the AOL/Earthlink case finds  
5 no infringement, he's never going to have to reach that. He'll  
6 just let it, he can let this case stay till the end of that  
7 case.

8 THE COURT: Well, I guess he'll never reach this issue  
9 unless and until somebody asks him to reach the issue.

10 MR. WYSS: That's correct, Your Honor. We did not ask  
11 him to do it. We came here first.

12 THE COURT: All right.

13 MR. BRAINERD: Your Honor, I don't want to belabor  
14 this, I just, I don't think we're getting quite an accurate  
15 statement of what's gone on here, as I mentioned before.

16 In the very brief in which they asked Judge Farnan to  
17 open up discovery on the ownership issue, they tell the Court in  
18 this brief that one of the reasons why that should happen, they  
19 being Verizon, "The ownership issue and Inline's standing to sue  
20 are threshold jurisdictional issues that must be addressed at  
21 the outset."

22 Based upon that representation, Judge Farnan issues an  
23 order that then -- I'm reading from Exhibit 13 to Mr. Wicky's  
24 declaration -- Judge Farnan issues an order which I've already  
25 reviewed with the Court in which he agrees this is a threshold

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1 issue, I'm giving you your discovery. He also says the  
2 AOL/Earthlink case has no bearing upon this. Let's get started  
3 and let's proceed.

4 Now, I cannot believe that Verizon made this motion  
5 and made these representations to the Court; that is, Judge  
6 Farnan, unless it had an intent to press the jurisdictional  
7 issue in front of him. I have to believe, based upon Judge  
8 Farnan's order, that he recognized this as a issue threshold  
9 issue, embraced it as a threshold issue, granted discovery on  
10 this matter, and fully intends to resolve it. And he's  
11 indicated that his resolution of this issue is going to have  
12 nothing to do with the progress of the AOL/Earthlink case.  
13 That's the status of the record.

14 They went up to Delaware at their request, that's  
15 where they are. They told the Court that this was the best and  
16 the most efficient forum in which to litigate, that's where  
17 they're litigating. And it's our position there's no reason for  
18 to you lift this stay. Judge Farnan will deal with these  
19 issues, and the results will dictate how we proceed down here.

20 THE COURT: All right. I have a message that Judge  
21 Farnan can speak with me at one o'clock today. So we'll recess  
22 until 1:15, and I'll talk with Judge Farnan about it and we'll  
23 figure out what we'll do. But -- well, I won't say anything  
24 more until that time. So I'll see you at 1:15.

25 (Recess taken from 12:04 p.m. to 1:15 p.m.)

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1 THE COURT: Well, counsel, I was able to get in touch  
2 with Judge Farnan. He is trying a patent case and he had a  
3 sentencing that he did during his lunch hour, but I was able to  
4 get a few minutes with him. And he said, as I expected him to  
5 say, that he fully intended to decide the ownership issue  
6 himself. He said the reason that he opened discovery on the  
7 ownership issue was so that he could decide it. He said it was  
8 a separate issue, and there was no reason why it had to wait for  
9 the decision in the AOL Online case, and that he gave counsel a  
10 certain amount of time, he couldn't remember how much, to  
11 complete discovery. And I told him that the defendants  
12 represented to the court that discovery was complete. So he  
13 said that with the cases pending in his court, that he thought  
14 it made more sense for him to decide the issue than for me to  
15 decide it, which is exactly what I thought.

16 So the Court's going to defer to Delaware, which --  
17 and I might say that what he had to say I concur in completely.  
18 Indeed, that's exactly what I was thinking. With all of the  
19 other issues pending in Delaware, that there was no reason for  
20 this court to grab hold of one single issue in part of a case  
21 when he had all of the other issues pending in Delaware. So  
22 he's going to decide. And he said when you finish discovery,  
23 just ask him for a hearing, and he'll give you whatever type of  
24 hearing you need, whether it's a factual hearing or any other  
25 type of hearing.

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1           So I'm going to decline to lift the stay on the cases  
2 in Norfolk. That order will be effective today. I'll prepare a  
3 written order explaining the reason for the Court's ruling in  
4 more detail, but the order declining to lift the stay is  
5 effective today.

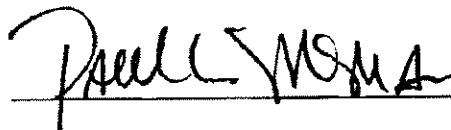
6           And I just think it's unfortunate that what should be  
7 litigation between two parties gets to the point where it's a,  
8 there are allegations back and forth between counsel. I have no  
9 idea what the validity of allegations are, and I don't intend to  
10 get into it. But I just think it's unfortunate that those  
11 things have to arise. I think it's unprofessional. And I hope  
12 that the case can be resolved on its merits without further  
13 personal barbs being traded in either direction.

14           (Whereupon, proceedings concluded at 1:20 p.m.)  
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25

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CERTIFICATION

I certify that the foregoing is a true, complete and correct transcript from the record of proceedings in the above-entitled matter.



Paul L. McManus, RMR

8/01/06

Date

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## EXHIBIT 5

Exhibit 5

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

BROADBAND TECHNOLOGY INNOVATIONS, )  
LLC, and PIE SQUARED LLC, )

Plaintiffs, )

v. )

C.A. No. 2006-01-001

VERIZON INTERNET SERVICES, INC.; )  
GTE.NET LLC d/b/a VERIZON INTERNET )  
SOLUTIONS; VERIZON SERVICES CORP.; )  
TELESECTOR RESOURCES GROUP, INC. d/b/a )  
VERIZON SERVICES GROUP; VERIZON )  
CORPORATE SERVICES GROUP INC. d/b/a )  
VERIZON SERVICES GROUP; VERIZON )  
ADVANCED DATA INC.; VERIZON AVENUE )  
CORP.; GTE SOUTHWEST INC. d/b/a VERIZON )  
SOUTHWEST; and VERIZON DELAWARE INC., )

Defendants. )

**JURY TRIAL DEMANDED**

FILED  
CLERK U.S. DISTRICT COURT  
DISTRICT OF DELAWARE  
2006 MAY -3 PM 4:44

**COMPLAINT FOR PATENT INFRINGEMENT  
AND DEMAND FOR JURY TRIAL**

Broadband Technology Innovations, LLC ("BBTI") and Pie Squared LLC ("Pie Squared") (collectively, "Plaintiffs") demand a jury trial, and complain against Verizon Internet Services, Inc., GTE.Net LLC d/b/a Verizon Internet Solutions, Verizon Services Corp., Telesector Resources Group, Inc. d/b/a Verizon Services Group, Verizon Corporate Services Group Inc. d/b/a Verizon Services Group, Verizon Advanced Data, Inc., Verizon Avenue Corp., GTE Southwest Inc. d/b/a Verizon Southwest, and Verizon Delaware Inc. (collectively "Defendants") as follows:

**THE PARTIES**

1. BBTI is a limited liability corporation organized and existing under the laws of Delaware, with its principal place of business at 1875 K Street, N.W., Washington, D.C. 20006. BBTI was incorporated under the name Mercury Communications I, LLC on March 4, 2004 and changed its name from “Mercury Communications I, LLC” to “Broadband Technology Innovations LLC” on September 29, 2005.

2. Pie Squared is a limited liability corporation organized and existing under the laws of Delaware, with its principal place of business at 1875 K Street, N.W., Washington, D.C. Pie Squared was incorporated on June 18, 2003.

3. On information and belief, Verizon Internet Services, Inc. (“VIS”) is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at 1880 Campus Commons Drive, Reston, Virginia. Upon information and belief, VIS conducts throughout the United States, and acts as an agent for Verizon affiliates, including certain Defendants herein.

4. On information and belief, GTE.Net LLC d/b/a Verizon Internet Solutions (“Verizon Internet Solutions”) is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at 4055 Corporate Drive, #400, Grapevine, Texas. Upon information and belief, Verizon Internet Solutions conducts substantial business throughout the United States and acts as an agent for Verizon affiliates, including certain Defendants herein.

5. On information and belief, Verizon Services Corp. (“Verizon Services”) is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at 1310 N. Court House Road, Arlington, Virginia. Upon information

and belief, Verizon Services conducts substantial business throughout many states within the United States and acts as the agent for Verizon affiliates, including certain Defendants herein.

6. On information and belief, Telesector Resources Group, Inc. d/b/a Verizon Services Group ("Verizon Services Group") is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at 104 West Street, New York, New York. Upon information and belief, Verizon Services Group conducts substantial business throughout many states within the United States and acts as an agent for Verizon affiliates, including certain Defendants herein.

7. On information and belief, Verizon Corporate Services Group Inc. d/b/a Verizon Services Group ("Verizon Corporate Services Group") is a corporation organized and existing under the laws of the State of New York, with a principal place of business at 140 West Street, New York, New York. Upon information and belief, Verizon Corporate Services Group conducts substantial business throughout many states within the United States and acts as an agent for Verizon affiliates, including certain Defendants herein.

8. On information and belief, Verizon Advanced Data, Inc. ("VADI") is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at 1320 N. Court House Road, Arlington, Virginia. Upon information and belief, VADI conducts substantial business throughout many states within the United States, and acts as an agent for Verizon affiliates, including certain Defendants herein.

9. On information and belief, Verizon Avenue Corp. ("Verizon Avenue") is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at 12901 Worldgate Drive, Herndon, Virginia. Upon information and

belief, Verizon Avenue conducts substantial business throughout many states within the United States and acts as the agent for Verizon affiliates, including certain Defendants herein.

10. Upon information and belief, GTE Southwest Inc. d/b/a Verizon Southwest ("Verizon Southwest") is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at 600 Hidden Ridge, Irving, Texas (with a business address at 1095 Avenue of the Americas, New York, New York). Upon information and belief, Verizon Southwest conducts substantial business throughout many states within the United States.

11. Upon information and belief, Verizon Delaware Inc. ("Verizon Delaware") is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at 901 Tatnall Street, Wilmington, Delaware. Upon information and belief, Verizon Delaware conducts substantial business throughout many states within the United States.

#### **JURISDICTION AND VENUE**

12. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a).

13. Venue is proper in this judicial district, pursuant to 28 U.S.C. § 1400(b). Each Defendant is incorporated in this judicial district; has committed acts of infringement in this judicial district, which acts are continuing; and/or has already answered related claims of infringement in this judicial district.



**BACKGROUND**

14. On December 1, 1998, U.S. Patent No. 5,844,596 ("the '596 Patent") was duly and legally issued for an invention entitled "Two-way RF Communication at Points of Convergence of Wire Pairs from Separate Internal Telephone Networks," listing David D. Goodman as the inventor. Robert Domnitz was later duly and lawfully added as a co-inventor. A copy of the '596 patent is attached hereto as Exhibit A.

15. On May 22, 2001, U.S. Patent No. 6,236,718 ("the '718 Patent") was duly and legally issued for an invention entitled "Video Transmission and Control System Utilizing Internal Telephone Lines," listing David D. Goodman as the inventor. Robert Domnitz was later duly and lawfully added as a co-inventor. A copy of the '718 Patent is attached hereto as Exhibit B.

16. On June 5, 2001, U.S. Patent No. 6,243,446 ("the '446 Patent") was duly and legally issued for an invention entitled "Distributed Splitter for Data Transmission Over Twisted Pairs," listing David D. Goodman as the inventor. Robert Domnitz was later added duly and lawfully as a co-inventor. A copy of the '446 patent is attached hereto as Exhibit C.

17. On April 1, 2003, U.S. Patent No. 6,542,585 ("the '585 Patent") was duly and legally issued for an invention entitled "Distributed Splitter For Data Transmission Over Twisted Wire Pairs," listing David D. Goodman as the inventor. Robert Domnitz was later added duly and lawfully as a co-inventor. A copy of the '585 Patent is attached hereto as Exhibit D.

18. On November 29, 2005, U.S. Patent No. 6,970,537 ("the '537 Patent") was duly and legally issued for an invention entitled "Video Transmission and Control

System Utilizing Internal Telephone Lines,” listing David D. Goodman as the inventor. Robert Domnitz was added duly and lawfully as a co-inventor. A copy of the ‘537 Patent is attached hereto as Exhibit E.

19. Prior to June 30, 2003, Inline Connection Corporation (“Inline”) was the owner of the entire right, title and interest in and to the ‘596, ‘718, ‘446, ‘585, and ‘537 Patents (the “Inline Patents”). On June 30, 2003, Inline entered into a “Bill of Sale and Assignment and Assumption Agreement” with Pie Squared under which Inline granted to Pie Squared a five percent interest in Inline’s entire right, title and interest in and to the Inline Patents. Today, Inline and Pie Squared together are the owners of all right, title and interest in and to the Inline Patents. As owner of the Inline Patents, Pie Squared has standing under Article III of the U.S. Constitution to sue for acts of infringement.

20. On March 4, 2004, BBTI, operating under its former name “Mercury Communications I, LLC”, entered into agreement with Inline, through which BBTI became the exclusive licensee to, with a first right to sue for past, present, and future infringement of, the Inline Patents in the area of Digital Subscriber Line (“DSL”) technology. As exclusive licensee to the Inline Patents in this area, BBTI has standing under Article III of the U.S. Constitution to sue for acts of infringement in this field of use.

21. On April 6, 2005, Inline filed suit in the Eastern District of Virginia for infringement of the Inline Patents by Defendants, through their ongoing use, sale, and offer for sale of DSL Service. On December 5, 2005, the Eastern District of Virginia transferred Inline’s claims against Defendants to the District of Delaware under 28 U.S.C. § 1404(a), which claims are now pending in Civil Action No. 05-866 (JJF) of this Court.

22. On March 28, 2006, Defendants filed a "Motion to Compel Discovery Regarding Threshold Jurisdictional 'Ownership' Issue", by which Defendants seek discovery related to the transfer of any rights to the Inline Patents, apparently contending that the March 4, 2004 agreement between Inline and BBTI constitutes an assignment of the Inline Patents.

23. On April 4, 2006, Defendants jointly answered Inline's complaint in Civil Action No. 05-866, and VIS and Verizon Delaware filed counterclaims against Plaintiffs for a declaratory judgment of non-infringement, invalidity, and unenforceability of the Inline Patents. Plaintiffs have answered those counterclaims and have filed their own counterclaims for infringement of the Inline Patents in Civil Action No. 05-866 against Defendants.

24. Plaintiffs believe that Inline, as owner of the Inline Patents, has standing to sue for acts of infringement in its own name and on its own behalf, and thus is a proper plaintiff standing alone. However, Plaintiffs file this complaint to ensure that this Court hears its claims against Defendants for infringement of the Inline Patents, whether any court dismisses Inline's original complaint for lack of subject matter jurisdiction.

25. Plaintiffs will seek consolidation of the action that arises from this complaint with Civil Action No. 05-866 at the appropriate time to further ensure that all proper parties with an interest in Defendants' ongoing acts of infringement of the Inline Patents are represented in a single action over the entirety of which there can be no doubt that this Court retains subject matter jurisdiction.

**COUNT ONE**  
**INFRINGEMENT OF THE '596 PATENT**  
**(35 U.S.C. §§ 271 ET SEQ.)**

26. Plaintiffs repeat and incorporate herein the entirety of the allegations contained in paragraphs 1 through 24 above.

27. Defendants have used, sold and/or offered to sell and, unless enjoined, will continue to use, sell and/or offer to sell, DSL Service that infringes one or more claims of the '596 Patent without license.

28. By using, selling and/or offering for sale DSL Service, Defendants have directly and/or indirectly infringed, and, unless enjoined, will continue to directly and/or indirectly infringe, one or more claims of the '596 Patent under 35 U.S.C. § 271 (a), (b) (c), and/or (f), literally and/or under the doctrine of equivalents.

29. On information and belief, Defendants have had notice of the '596 Patent. Defendants' infringement of the '596 Patent under 35 U.S.C. § 271(a), (b), (c), and/or (f) has been and continues to be willful and deliberate.

30. As a direct and proximate consequence of the acts and practices of Defendants, Plaintiffs have been, are being, and, unless such acts and practices are enjoined by the Court, will continue to be injured in its business and property rights, and have suffered, are suffering and will continue to suffer injury and damages for which they are entitled to relief under 35 U.S.C. § 284.

31. As a direct and proximate consequence of the acts and practices of Defendants, Defendants have also caused, are causing, and unless such acts and practices are enjoined by the Court, will continue to cause irreparable harm to Plaintiffs for which there is no

adequate remedy at law, and for which Plaintiffs are entitled to permanent injunctive relief under 35 U.S.C. § 283.

**COUNT TWO**  
**INFRINGEMENT OF THE '718 PATENT**  
**(35 U.S.C. §§ 271 ET SEQ.)**

32. Plaintiffs repeat and incorporate herein the entirety of the allegations contained in paragraphs 1 through 24 above.

33. Defendants have used, sold and/or offered to sell and, unless enjoined, will continue to use, sell and/or offer to sell, DSL Service that infringes one or more claims of the '718 Patent without license.

34. By using, selling and/or offering for sale DSL Service, Defendants have directly and/or indirectly infringed, and, unless enjoined, will continue to directly and/or indirectly infringe, one or more claims of the '718 Patent under 35 U.S.C. § 271 (a), (b) (c), and/or (f), literally and/or under the doctrine of equivalents.

35. On information and belief, Defendants have had notice of the '718 Patent. Defendants' infringement of the '718 Patent under 35 U.S.C. § 271(a), (b), (c), and/or (f) has been and continues to be willful and deliberate.

36. As a direct and proximate consequence of the acts and practices of Defendants, Plaintiffs have been, are being, and, unless such acts and practices are enjoined by the Court, will continue to be injured in its business and property rights, and have suffered, are suffering and will continue to suffer injury and damages for which they are entitled to relief under 35 U.S.C. § 284.

37. As a direct and proximate consequence of the acts and practices of Defendants, Defendants have also caused, are causing, and unless such acts and practices are

enjoined by the Court, will continue to cause irreparable harm to Plaintiffs for which there is no adequate remedy at law, and for which Plaintiffs are entitled to permanent injunctive relief under 35 U.S.C. § 283.

**COUNT THREE**  
**INFRINGEMENT OF THE '446 PATENT**  
**(35 U.S.C. §§ 271 ET SEQ.)**

38. Plaintiffs repeat and incorporate herein the entirety of the allegations contained in paragraphs 1 through 24 above.

39. Defendants have used, sold and/or offered to sell and, unless enjoined, will continue to use, sell and/or offer to sell, DSL Service that infringes one or more claims of the '446 Patent without license.

40. By using, selling and/or offering for sale DSL Service, Defendants have directly and/or indirectly infringed, and, unless enjoined, will continue to directly and/or indirectly infringe, one or more claims of the '446 Patent under 35 U.S.C. § 271 (a), (b) (c), and/or (f), literally and/or under the doctrine of equivalents.

41. On information and belief, Defendants have had notice of the '446 Patent. Defendants' infringement of the '446 Patent under 35 U.S.C. § 271(a), (b), (c), and/or (f) has been and continues to be willful and deliberate.

42. As a direct and proximate consequence of the acts and practices of Defendants, Plaintiffs have been, are being, and, unless such acts and practices are enjoined by the Court, will continue to be injured in its business and property rights, and have suffered, are suffering and will continue to suffer injury and damages for which they are entitled to relief under 35 U.S.C. § 284.

43. As a direct and proximate consequence of the acts and practices of Defendants, Defendants have also caused, are causing, and unless such acts and practices are enjoined by the Court, will continue to cause irreparable harm to Plaintiffs for which there is no adequate remedy at law, and for which Plaintiffs are entitled to permanent injunctive relief under 35 U.S.C. § 283.

**COUNT FOUR**  
**INFRINGEMENT OF THE '585 PATENT**  
**(35 U.S.C. §§ 271 ET SEQ.)**

44. Plaintiffs repeat and incorporate herein the entirety of the allegations contained in paragraphs 1 through 24 above.

45. Defendants have used, sold and/or offered to sell and, unless enjoined, will continue to use, sell and/or offer to sell, DSL Service that infringes one or more claims of the '585 Patent without license.

46. By using, selling and/or offering for sale DSL Service, Defendants have directly and/or indirectly infringed, and, unless enjoined, will continue to directly and/or indirectly infringe, one or more claims of the '585 Patent under 35 U.S.C. § 271 (a), (b) (c), and/or (f), literally and/or under the doctrine of equivalents.

47. On information and belief, Defendants have had notice of the '585 Patent. Defendants' infringement of the '585 Patent under 35 U.S.C. § 271(a), (b), (c), and/or (f) has been and continues to be willful and deliberate.

48. As a direct and proximate consequence of the acts and practices of Defendants, Plaintiffs have been, are being, and, unless such acts and practices are enjoined by the Court, will continue to be injured in its business and property rights, and have suffered, are

suffering and will continue to suffer injury and damages for which they are entitled to relief under 35 U.S.C. § 284.

49. As a direct and proximate consequence of the acts and practices of Defendants, Defendants have also caused, are causing, and unless such acts and practices are enjoined by the Court, will continue to cause irreparable harm to Plaintiffs for which there is no adequate remedy at law, and for which Plaintiffs are entitled to permanent injunctive relief under 35 U.S.C. § 283.

**COUNT FIVE**  
**INFRINGEMENT OF THE '537 PATENT**  
**(35 U.S.C. §§ 271 ET SEQ.)**

50. Plaintiffs repeat and incorporate herein the entirety of the allegations contained in paragraphs 1 through 24 above.

51. Defendants have used, sold and/or offered to sell and, unless enjoined, will continue to use, sell and/or offer to sell, DSL Service that infringes one or more claims of the '537 Patent without license.

52. By using, selling and/or offering for sale DSL Service, Defendants have directly and/or indirectly infringed, and, unless enjoined, will continue to directly and/or indirectly infringe, one or more claims of the '537 Patent under 35 U.S.C. § 271 (a), (b) (c), and/or (f), literally and/or under the doctrine of equivalents.

53. On information and belief, Defendants have had notice of the '537 Patent. Defendants' infringement of the '537 Patent under 35 U.S.C. § 271(a), (b), (c), and/or (f) has been and continues to be willful and deliberate.

54. As a direct and proximate consequence of the acts and practices of Defendants, Plaintiffs have been, are being, and, unless such acts and practices are enjoined by



the Court, will continue to be injured in its business and property rights, and have suffered, are suffering and will continue to suffer injury and damages for which they are entitled to relief under 35 U.S.C. § 284.

55. As a direct and proximate consequence of the acts and practices of Defendants, Defendants have also caused, are causing, and unless such acts and practices are enjoined by the Court, will continue to cause irreparable harm to Plaintiffs for which there is no adequate remedy at law, and for which Plaintiffs are entitled to permanent injunctive relief under 35 U.S.C. § 283.

**DEMAND FOR TRIAL BY JURY**

Plaintiffs hereby demand a jury trial for all issues deemed to be triable by jury.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for the entry of a judgment from this Court:

- a. Declaring that the '596, '446, '718, '585, and '537 Patents were duly and legally issued, and are valid and enforceable;
- b. Declaring that each Defendant has directly and/or indirectly infringed one or more claims of each of the '596, '446, '718, '585, and '537 Patents;
- c. Awarding Plaintiffs damages including a reasonable royalty in accordance with 35 U.S.C. § 284, including damages incurred after those proven at trial, for which Plaintiffs request a post-verdict accounting;
- d. Declaring that Defendants have willfully infringed one or more claims of each of the '596, '446, '718, '585, and '537 Patents and awarding Plaintiffs treble damages therefor;

e. Deeming this to be an “exceptional” case within the meaning of 35 U.S.C. § 285, entitling Plaintiffs to an award of its reasonable attorneys’ fees, expenses, and costs in this action;

f. Enjoining Defendants, and their respective officers, agents, servants, representatives, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, from further acts of infringement under 35 U.S.C. § 271 of any one or more claims of each of the ‘596, ‘446, ‘718, ‘585, and ‘537 Patents, pursuant to 35 U.S.C. § 283;

g. Awarding Plaintiffs its costs in connection with this action; and

h. Awarding Plaintiffs such other and further relief as this Court deems just and proper.

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Dated: May 3, 2006  
518675

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

*/s/ Julia Heaney*

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